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Viewing cable 09SANJOSE969, Costa Rica will request an extension of CAFTA-DR deadline

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Reference ID	Created	Released	Classification	Origin
09SANJOSE969	2009-11-24 16:18	2011-08-30 01:44	CONFIDENTIAL	Embassy San Jose

Appears in these articles:

<http://www.nacion.com/2011-03-02/Investigacion.aspx>

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E.O. 12958: DECL: 2012/11/25
TAGS: [ETRD](#) [ECON](#) [KIPR](#) [PREL](#) [PGOV](#) [CS](#)
SUBJECT: Costa Rica will request an extension of CAFTA-DR deadline

CLASSIFIED BY: Schechter Torres, Julie, Counselor for Political and Economic Affairs, State, POL-ECON; REASON: 1.4(B), (D)

¶1. (C) INTRODUCTION AND SUMMARY. Costa Rica's Foreign Trade Ministry (COMEX) has informed Embassy that the GOCR most likely will not meet the December 31 deadline for the passage of the 14th CAFTA-DR bill and finalization of intellectual property rights (IPR) regulations. On November 16, COMEX Director Esteban Aguero stated that COMEX Minister Marco Vinicio Ruiz and Foreign Minister Bruno Stagno planned to contact their USG counterparts to request an "extension" from the USG. USTR-COMEX negotiations on IPR regulations (the parties differ on text), the legislative calendar, the lack of legislator support, and the 2010 Costa Rican presidential and legislative elections, all make it likely that the bill will not pass until April or even later in the year. Embassy recommends that the USG formulate its strategy now on the consequences, if any, Costa Rica should face for missing its third CAFTA-DR deadline. We recommend that the USG should not agree to an "extension" request by the GOCR. Furthermore, the USG should continue with the legal mechanism put into effect last year which will halt market access for a product category of USTR's choice until the GOCR meets all CAFTA-DR obligations. End Introduction and Summary.

WHY SKATE BY ANOTHER DEADLINE AGAIN?

¶2. (U) Costa Rica once again finds itself at odds with an important CAFTA-DR deadline. This now makes for the third deadline drama created by the GOCR. By agreement with USTR, the GOCR achieved CAFTA-DR entry-into-force on January 1, 2009. However, the GOCR did not fully meet all of USTR's requirements -- specifically in intellectual property rights (reftel). USTR granted the GOCR a one year "grace period" as Costa Rica entered the agreement. A side letter required the GOCR to meet the three lingering IPR requirements by December 31, 2009. The consequence of missing the deadline was the possibility of a preferential access holdback (likely to be sugar). Despite this extension, the GOCR made little progress during 2008 on what became known as the 14th bill.

SO WHAT REALLY ARE THE PROSPECTS?

¶3. (SBU) There are four factors that shape the prospects of the GOCR meeting USTR's legislative and regulatory requirements:

-- Legislative Calendar: The Arias Administration controls

the legislative calendar from December 2009 until April 2010. However, the Legislative Assembly will close for

business most likely on December 17 and not reopen until after the February 7 elections. Thereafter, the next time the executive branch controls the legislative calendar will be August. To become law, the bill must receive two Legislative Assembly votes, possibly a constitutional review (if requested by ten legislators), presidential signature, and publication.

-- Legislative Support: The Arias administration, according to COMEX's Aguero, lacks the 38 votes (of a total of 57) that it needs in the Legislative Assembly to approve the 14th bill. Also, what Aguero did not mention is that COMEX has virtually no gravitas with legislators and thus very little influence after the bruising implementation process of passing the previous thirteen laws from 2007 to 2008.

-- Regulatory Text: COMEX (and other parts of the GOCR) and USTR need to agree on language for agro-chemical regulations. Originally, this issue was one of the three technical corrections in the 14th bill. COMEX and USTR agreed that addressing the agro-chemical issue through regulations would work. The two parties discussed agrochemical language from April to July. However, it became apparent that COMEX had not gained full support of the Ministries of Health and Industry-Economy-Trade on fundamental aspects of the agro-chemical issue. Due to the lack of progress, discussions on the issue stalled in July. In October, the USTR-COMEX dialogue re-started but an agreement on text has yet to be reached.

-- Elections: During January, all Costa Rican political hands will focus on the presidential and legislative elections on February 7. If PLN candidate Laura Chinchilla wins, then the possibility of legislative action in the February-April "lame-duck" period exists, but is unlikely.

After April, the 14th bill becomes the business of the new president. (Note: Director Aguero mentioned that PLN presidential candidate Chinchilla and advisor Fernando Sanchez are "aware" of the issues associated with the 14th bill and are "worried." End note.)

¶4. (SBU) When asked about legislator awareness of an end-of-year deadline for the 14th bill, Director Aguero answered that COMEX has explained the importance of the bill's schedule to the legislators. The legislators have chosen to ignore or discount the explanation. In contrast, a key legislative staffer told us that COMEX has not even been trying to draw this issue to legislators' attention, focusing instead on upcoming trade agreements with Europe and Singapore. The bill currently ranks 120th on the Legislative Assembly's bill roster.

¶5. (SBU) With this assessment, the odds of passing the 14th bill in 2009 rate less than 5 percent. Only one month ago COMEX officials, including Minister Ruiz and Director Aguero, espoused a much sunnier prognostication to Charge Peter Brennan and Econoff by assuming that the GOCR would overcome the first three factors listed above, plus clear the GOCR's legislative process by the December 31 deadline.

¶6. (U) Looking ahead, the nature of the bill's legislative support will change when the new legislators arrive in office on May 1, 2010. Legislators cannot serve consecutively, which means a new set of legislators could very well review the 14th law in mid-2010. However, whether this is positive or negative largely depends on the party affiliation and the size of the mandate of the new president.

ARE THERE CONSEQUENCES?

¶7. (SBU) With the news of the GOCR's interest in an

"extension," the USG must now weigh how to handle such a request. According to Costa Rica's CAFTA-DR obligations, if the GOCR does not meet the December 31 deadline, then the holdback on market access can go into effect.

Evidently, the GOCR wants to re-focus the CAFTA-DR discussion with the USG away from the consequences of not meeting the deadline by proposing an "extension." A third

"extension" sharply contrasts with the spirit of the signed documents from the entry-into-force process of December 2008. When sharing the news of the "extension" request, Aguero never mentioned the side letter or preferential access holdback. Moreover, an "extension," in whatever form it could take, will likely bridge two administrations.

COMMENT

18. (C) Post recommends that the USG institute the holdback on market access as a consequence of the GOCR not meeting the December 31 deadline. After two deadline extensions and a one year grace period, Post doubts that another "extension" will spur the GOCR into action. In 2010, GOCR action depends on the elections combined with an unhelpful legislative calendar. These two factors will likely complicate -- not ease -- completing the 14th bill and the lingering IPR regulations.

19. (C) As for a new administration, if the new president is friendly to the 14th bill, the bill may still not receive action until August, the first time the new administration will control the legislative calendar. And even then, the bill could be buried on the priority list as the new administration attempts to score some quick legislative victories on high profile projects (for example in security, education, or infrastructure). This means that the bill could miss the August "window" and the USG could repeat this very same discussion twelve months from

now, looking ahead to still another deadline in December

¶2010.

BRENNAN